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THE LEAGUE AND THE SINO-JAPANESE DISPUTE

by

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with the aid of the Research Staff of the Foreign Policy Association

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THE MANCHURIAN PHASE OF THE DISPUTE

FROM the point of view of world politics the Sino-Japanese dispute is of great importance. It involves the fate of the "open door" policy in China and the maintenance of the balance of power in the Far East, issues which had apparently found a solution in the Washington Conference of 1921, where the countries with paramount interests in the Far East had undertaken, in the so-called Nine-Power Pact, to respect the sovereignty, the independence, and the territorial and administrative integrity of China, and to work for the establishment of the "open door" throughout China. In addition, the dispute furnishes the first real test for the peace machinery which has been built up since the World War. It is therefore of interest to examine in what manner and with what results the League of Nations has met these issues.

When on September 19 news was flashed to the world of the bombardment and occupation of Mukden by the Japanese forces, all eyes instinctively turned to Geneva. The annual meeting of the Assembly was just drawing to a close, and the 65th session of the Council, of which both Japan and China

were members, was to meet for the first time that afternoon. The Japanese delegate, M. Yoshizawa, hastened to assure the Council that his government had taken all possible measures to localize the incident.¹ It was not until September 21, however, that China, alarmed at the rapid expansion of the Japanese occupation, formally brought the conflict before the Council under Article 11 of the Covenant. China indicated in advance its willingness to abide by any decision of the Council.

Early on September 22 the Council met to act on the Chinese request. Article 11, specifying merely that "the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations," left wide discretion to the Council. Its procedure, however, had been fairly well established both by precedent² and by the report of a Council Committee of March 15, 1927.³

1. League of Nations, *Official Journal*, December 1931, p. 2248.

2. Eighteen cases had been submitted to the Council under Article 11. Cf. T. P. Conwell-Evans, *The League Council in Action* (London, Oxford University Press, 1929), p. 278 et seq.

3. Cf. M. S. Wertheimer, "The League of Nations and Prevention of War," *Foreign Policy Association, Information Service*, Vol. VI, No. 11, August 6, 1930, p. 216.

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According to this procedure, it was incumbent upon the Council to take those "measures of conservancy" which would secure the cessation of hostilities and the mutual withdrawal of troops and, once this had been accomplished, to obtain a settlement of the "merits" of the dispute. The Council's function along these lines of procedure was essentially mediatory.

The Council first heard the arguments of both parties. M. Yoshizawa justified Japan's military acts by the immediate necessity for measures of self-defense. The tension between China and Japan had been steadily growing, he said, and a series of deplorable incidents had been provoked by the Chinese. Finally the attempted destruction of the Japanese-owned South Manchuria Railway above Mukden had made it imperative for the Japanese to occupy immediately important points in certain towns in order to protect the railway, as well as the lives and property of Japanese nationals, from imminent danger. This action had been particularly necessary in view of the disproportion between the strength of the Japanese Railway garrison and that of China's Manchurian army. Dr. Sze argued for China that the only relevant issue was Japan's failure to fulfil its obligation to resort to the pacific procedure provided in the Covenant.

The issue of a neutral committee

On the afternoon of September 22 the Council authorized its president, M. Lerroux, to address an urgent appeal to both governments to refrain from any action which might aggravate the situation or prejudice the peaceful settlement of the problem. At the same time, M. Lerroux was entrusted with the task of negotiating with the Chinese and Japanese representatives, for the purpose of obtaining their agreement to an arrangement which would make possible the immediate withdrawal of the Japanese troops. The Council agreed with Japan's contention that such evacuation should be made conditional on the safety of Japanese nationals. The sole issue, therefore, was whether Japan was to remain judge of the requirements of the safety of its own nationals. On this issue a Council Committee of five members, presided over by M. Lerroux, concentrated its attention. The Chinese government expressed a willingness to assume full responsibility for the protection of Japanese subjects. China desired the establishment of a neutral committee on the spot, not only to supervise the withdrawal of the Japanese troops, but also to aid the Chinese authorities in arranging for the effective protection of Japanese nationals in the territory thus evacuated. Such a committee, China argued, could also supply the Council

with accurate factual data on which to base action. Moreover, a precedent existed for such a committee. In the Greco-Bulgarian dispute in 1925, after Greek troops had invaded Bulgaria, the Council had constituted the military attachés of several of the great powers in Sofia and Athens as a committee to supervise the evacuation of Greek troops and the re-occupation of the evacuated territory by the Bulgarians. Japan, however, although insisting that the powers did not know the facts of the situation, continued to reject any form of neutral supervision or inquiry. It claimed that its intervention in the face of imminent danger was entirely consistent with its obligations under the League Covenant and the Pact of Paris, since it harbored no territorial designs in Manchuria and only desired to reach a peaceful settlement as rapidly as possible. Japanese troops, it pledged, would be withdrawn to the railway zone in proportion as the maintenance of the safety of Japanese nationals and the protection of the railway was assured. Moreover, both in a statement of September 24 and in the public session of the Council on September 28, Japan represented the situation in Manchuria as considerably improved.⁴ It consequently asked the Council not to "run the risk of adversely affecting the situation which already showed signs of improvement."

Cooperation by the United States

Neither the negotiations of the Committee of Five nor the public sessions of the Council on September 25 and 28 succeeded in reconciling the views of the parties. The Council was reluctant to force the issue unless it could secure the support of the United States for a common line of action. On September 22 it had already decided to communicate its minutes and the documents on the case to the American government. In reply to this indirect invitation, Secretary Stimson informed the Council on September 24 that the United States was in "whole-hearted sympathy with the attitude of the League" as expressed in the initial steps taken by the Council and would dispatch to Japan and China notes along the lines of the appeal made to them by M. Lerroux.⁵ It soon developed, however, that the United States would not support the Council's efforts to induce Japan to accept a committee of evacuation. The Council was finally convinced that to put pressure on the Japanese government would only prejudice the success of the

4. Cf. League of Nations, *Official Journal*, December 1931, p. 2477-8, and p. 2289. Japan maintained that, aside from some troops stationed as a precaution in Mukden and Kirin, there were Japanese posts in only a few towns.

5. Cf. *Conditions in Manchuria*, Senate Document No. 55, 72nd Cong., 1st sess., p. 5. For the text of these identic notes, sent out on September 24, cf. *ibid.*, p. 8. In a memorandum of September 22 to Ambassador Debuchi, Secretary Stimson had already manifested his concern over the situation.

latter's efforts to control a situation believed to have been precipitated by the military.⁶

Resolution of September 30

The Council therefore abandoned its efforts to obtain an evacuation under neutral supervision. The Japanese statements that the situation had already improved, even though contradicted by the Chinese,⁷ apparently also influenced the Council to heed M. Yoshizawa's plea to trust the "sincerity" of Japan. Consequently it adopted a rather innocuous resolution on September 30, and adjourned until October 14. This resolution merely noted Japan's declaration of territorial disinterestedness, and its undertaking to withdraw its troops in proportion as the security of the lives and property of its nationals could be assured, as well as the assurances of both governments that they would take all necessary steps "to prevent any extension of the incident or any aggravation of the incident." It requested speedy execution of these undertakings, and reports by both parties regarding future developments.⁸ Japan immediately approved. China assented only reluctantly, for the Council had left Japan the judge of the time when it could safely withdraw its troops.

THE LEAGUE REQUESTS JAPAN TO WITHDRAW

The week following the adoption of the League resolution witnessed a rapid extension of the Japanese occupation, marked by several acts of bombardment. On October 8 Japanese planes bombarded Chinchow, the temporary capital of Marshal Chang Hsueh-liang, causing serious damage and loss of life. This action provoked a sharp protest from the American government.⁹ The President of the Council hastened to remind both parties of their undertaking to avoid any aggravation of the dispute. At China's request the Council was convened for October 13.

The United States takes a seat on the Council

This time, when it met, the Council had before it a definite pledge of American co-

operation. Recent events had convinced the United States that as a protagonist and signatory of the Pact of Paris and also of the Nine-Power Treaty for the preservation of the sovereignty, independence, and territorial and administrative integrity of China, it was in its interest to cooperate closely with an organization which had assumed jurisdiction of the Sino-Japanese dispute. On this basis, Secretary Stimson urged in a note to the League of October 5 that "it is most desirable that the League in no way relax its vigilance and in no way fail to assert all the pressure and authority within its competence toward regulating the action of China and Japan in the premises." In addition, he pledged that the American government, while acting independently, would "endeavor to reenforce what the League does."¹⁰ The Council, under the able presidency of M. Briand, immediately proceeded to give form and method to this cooperation. Disregarding vigorous Japanese objections to the constitutionality of this procedure, it issued an invitation to the United States on October 15 to designate a representative to sit on the Council as a signatory of the Pact of Paris in order to express an opinion as to the method by which effect might be given to this Pact and to follow the deliberations as a whole. It failed, however, to invite the Soviet Union, a party also greatly interested in the dispute. The United States promptly accepted, and on October 16 Prentiss B. Gilbert, American Consul in Geneva, took a seat at the Council table. He made it clear, however, that he could not participate in deliberations regarding the application of the machinery of the League Covenant.¹¹ On October 17 Mr. Gilbert and the neutral members of the Council decided to invite their governments to call the attention of both parties to their obligations under Article 2 of the Pact of Paris.¹²

Japan introduces new conditions

The Council now turned its attention to securing some practical arrangement for the evacuation of the Japanese troops. It apparently adopted the Chinese view that, as long as Japanese troops remained on Chinese soil, an extension of their activities was inevitable, for their presence fostered anti-Japanese agitation and disrupted the Chinese civilian government, thus creating further disorder. In long-drawn-out negotiations, the Council attempted in vain to secure Japan's consent to an arrangement providing for the withdrawal of Japanese troops to the railway zone within three

6. Cf. "The League and Manchuria," by a student of the League, *Manchester Guardian*, January 25, 1932; also *New York Times*, September 26, 1931.

7. A Chinese cable reported a bombardment of Tungtiao by Japanese planes on September 27 and the occupation of points along the Kirin-Tunhua Railway. Japanese troops were apparently at Changchun and Tunhua also. A cable of October 1 reported Japanese troops in at least nine towns outside the railway zone. (Cf. League of Nations, *Official Journal*, December 1931, p. 2469.)

8. *Ibid.*, p. 2307-8.

9. In a memorandum to the Japanese Foreign Minister on October 11, the United States described the bombing of an unfortified and unwarmed town as "one of the most extreme of military actions, deprecated even in time of war," and declared that the reasons given in justification, including the intention to prevent Marshal Chang from establishing a new capital at Chinchow and resuming his authority in Manchuria, would seem "quite at variance with the commitments undertaken" under the resolution of September 30. (Cf. "Conditions in Manchuria," cited, p. 16-17.)

10. "Conditions in Manchuria," cited, p. 14.

11. Cf. League of Nations, "Minutes of the 65th Session of the Council," *Official Journal*, December 1931, p. 2336-7.

12. The American government announced on October 20 that it had sent identic notes to this effect after having been informed that Great Britain, France, Italy, Spain, and Norway had done likewise.

weeks, and for the appointment of neutral observers to help arrange the withdrawal and see to the security of Japanese nationals. M. Yoshizawa insisted that the increasing activities of brigands and disbanded soldiers, together with the anti-Japanese agitation sponsored by the Chinese government, necessitated the continuance of the Japanese occupation and "policing" measures. Japan could withdraw only following China's assent to certain "main principles" necessary for the maintenance of normal relations between the two countries. Although Japan declined to communicate officially the nature of these "principles," it was known, nevertheless, that they required undertakings by China to put an end to the anti-Japanese boycott and agitation, to conclude an agreement for cooperation and the avoidance of ruinous competition between the South Manchuria Railway and the Chinese railways, and to give effect to all existing treaty rights. Insistence on all of these undertakings was really tantamount to the introduction of a new condition not immediately affecting the security of Japanese nationals. On this issue no compromise between Japan and China was possible.

Resolution of October 24

The Council's patience was finally exhausted. It determined to force the issue. On October 22 M. Briand brought before the Council a draft resolution. It recalled first of all the Japanese assurance regarding withdrawal, and the Chinese undertaking to assume responsibility for the security of Japanese nationals in such an event, emphasized that both governments were "bound not to resort to any aggressive policy or action and to take measures to suppress hostile agitation"—a reference to the boycott—and stressed the importance of Japan's declaration of territorial disinterestedness. Expressing the conviction "that the fulfillment of these assurances and undertakings is essential for the restoration of normal relations between the two parties," the resolution

1. Called upon the Japanese government to withdraw its troops progressively into the railway zone, so that total withdrawal might be effected before the date of the next Council meeting, fixed for November 16;

2. Called upon the Chinese government to make such arrangements for taking over the territory thus evacuated as would insure the safety of the lives and property of Japanese subjects, and requested it to associate with the Chinese authorities designated for this purpose representatives of other powers in order that these might be able to follow the execution of the arrangements.

In addition, the resolution recommended that, after the evacuation, the two governments should enter into direct negotiations for the liquidation of the recent incidents

and the existing difficulties regarding the railway situation.¹³

A two days' debate, in which Japan was made to feel the isolation of its position, failed to shake its adamant opposition to the adoption of this resolution. M. Yoshizawa continued to insist on a previous understanding between China and Japan "as regards the fundamental principles governing normal relations—that is to say, affording an assurance for the safety of the lives of Japanese nationals and for the protection of their property."¹⁴ Pressed by M. Briand and Viscount Cecil, he refused to divulge the nature of these principles, or to deny that they included a reaffirmation of treaties by China. The principles, he said, were a matter for discussion between China and Japan alone. The Council took the stand that it could on no account expect China to negotiate with Japan on the fundamental issues of the dispute while still under the pressure of military occupation.

Accordingly, on October 24, it adopted the draft resolution by a vote of 13 to 1, Japan alone dissenting. The resolution had all the appearances of an ultimatum. Actually, however, Japan's dissent had deprived the resolution of legal force, for it was immediately assumed that action under Article 11 required absolute unanimity. The American government did not endorse the Council's stand on the subject of the Japanese occupation until November 5, and even then it did not approve of the time limit imposed by the resolution.¹⁵

Japan's five points

The Council still entertained some hope that Japan would ultimately yield. M. Briand tried in vain to make it easy for Japan to do so. The Japanese government had finally communicated to the League a statement of October 26 enumerating the five "fundamental principles" on the recognition of which it insisted.¹⁶ They included:

Mutual repudiation of aggressive policy and conduct; respect for China's territorial integrity; complete suppression of all organized movements interfering with trade and stirring up international hatred; effective protection through-

13. Cf. League of Nations, *Official Journal*, December 1931, p. 2340-1; cf. also T. A. Bisson, "Railway Rivalries in Manchuria between China and Japan," *Foreign Policy Reports*, Vol. VIII, No. 3, Part I, April 13, 1932.

14. Cf. League of Nations, "Minutes of the 65th Session of the Council," *Official Journal*, December 1931, p. 2346.

15. In a memorandum to the Japanese Foreign Minister, Secretary Stimson expressed regret over the insistence of Japan that broader matters, having little direct bearing on the immediate situation, should be disposed of by direct negotiations prior to evacuation. Japanese withdrawal, he held, would in itself create an atmosphere favorable to negotiation and would dispel the idea that Japan intended to use military pressure to effect a settlement of broader issues. As matters stand now, the American government could "not escape the conclusion that in the efforts to protect the South Manchuria Railway and the lives and property of Japanese subjects against attack, a situation had been created in Manchuria which gives Japan substantial control of South Manchuria and has, temporarily at least, destroyed the administrative integrity of China in this region." (Cf. "Conditions in Manchuria," cited, p. 30-32.)

16. Cf. League of Nations, C.764.M.362.1931.VII, *Official Journal*, December 1931, p. 2513.

out Manchuria of all peaceful pursuits undertaken by Japanese subjects; and respect for treaty rights in Manchuria.

M. Briand attempted to make the best of this declaration. He had obtained from Dr. Sze the following statement¹⁷ on China's treaty obligations, continued in a letter of October 24:

"China, like every Member of the League of Nations, is bound by the Covenant to a 'scrupulous respect for all treaty obligations.' The Chinese Government for its part is determined loyally to fulfil all its obligations under the Covenant. It is prepared to give proofs of this intention by undertaking to settle all disputes with Japan as to treaty interpretation by arbitration or judicial settlement, as provided in Article 13 of the Covenant."

M. Briand then tried to demonstrate to Japan that the first four of its "fundamental principles" were included in fact in the terms of the resolution of October 24 and that the fifth was adequately covered by Dr. Sze's letter.¹⁸ Japan, however, rejected this interpretation. It maintained that the terms of the resolution were not explicit or comprehensive enough to cover the first four points, and that Dr. Sze's letter seemed inferentially "to call in question the validity of some of the treaties constituting the basic embodiment of the relations between Japan and China," a contention which it could not entertain.¹⁹ Thus, as it had first rejected neutral observation and inquiry, it now also rejected arbitration.

Extension of Japanese occupation

The Council's failure to obtain Japan's approval of the resolution of October 24 enabled Japan to continue the rapid consolidation of its régime. Japanese troops penetrated into Northern Manchuria. Following clashes between Japanese and Chinese forces on the Nonni River on November 4 and 5, Dr. Sze appealed to the League for urgent intervention. A request by the president of the Council to both parties "to issue instructions without delay to the officers commanding their forces in order to remove all possibility of sanguinary engagements between Chinese and Japanese troops"²⁰ failed to prevent a Japanese counter-attack resulting in the rout of the Chinese forces. The Council was then summoned to meet in Paris on November 16. Meanwhile, on November 12, the Japanese commander served an ultimatum on the Chinese requiring the evacuation of Tsitsihar. Complications with the Soviet Union were expected. Even while the Council was sitting in Paris the Japanese troops

launched a general offensive and occupied Tsitsihar on November 18.

When the Council reconvened it was therefore faced with a desperate situation. Nevertheless there appeared to be no inclination to take energetic action. M. Briand's opening speech was noticeably mild. Without allowing the parties to state their cases in public, the Council immediately adjourned its public meeting to veil its proceedings in comparative secrecy. The position of the United States was uncertain. Ambassador Dawes had been sent to Paris to keep in touch with the work of the Council, but did not participate in either the private or public meetings of that body.

The Council, evidently accepting the Japanese view that some agreement on the "fundamental points" was necessary, adopted a new form of approach to the dispute. It concentrated its attention on the fifth point regarding respect for treaty rights. On this point, however, no compromise was possible. Japan insisted on direct negotiations with China for the conclusion of an entirely new treaty based on the five points, and declined to conduct these negotiations in the presence of other powers at Paris. Dr. Sze indignantly rejected all proposals making evacuation dependent on what he deemed the recognition of a Japanese protectorate in Manchuria.²¹

JAPAN PROPOSES A COMMISSION OF INQUIRY

The Council had evidently reached an impasse when Japan suddenly came forward with a conciliatory proposal. Entrenched in Tsitsihar and in control of practically the whole government of Manchuria, it now proposed that a Commission of Enquiry be set up.²² The Council went immediately to work on the basis of this proposal. The draft resolution prepared by November 25 provided not only for the Commission of Enquiry, but also emphasized the utmost importance of a speedy withdrawal of the Japanese troops, and called on both governments to give the strictest orders to the commanders of their respective forces to refrain from any initiative which might lead to further fighting and loss of life. This draft did not meet with the approval of either party. The Chinese government insisted on some time limit for the withdrawal of the Japanese troops. Japan objected on the ground that acceptance would prejudice its right to take policing measures against bandits and other disorderly elements.

Meanwhile, the attention of the Council was diverted to the immediate military situ-

17. League of Nations, C.761.M.359.1931.VII., *Official Journal*, December 1931, p. 2513.

18. Cf. League of Nations, C.776.M.371.1931.VII., *Official Journal*, December 1931, p. 2515-6.

19. Cf. League of Nations, C.814.M.404.1931.VII., *Official Journal*, December 1931, p. 2516-7.

20. Cf. League of Nations, C.804.M.397.1931.VII., *Official Journal*, December 1931, p. 2521.

21. Cf. Dr. Sze's note of November 18 to the Council. (League of Nations, *Official Journal*, December 1931, p. 2552.)

22. Cf. League of Nations, "Minutes of the 65th session of the Council," *Official Journal*, December 1931, p. 2365-6.

ation in Southern Manchuria. A threatening Japanese drive toward Chinchow, the temporary capital of Marshal Chang Hsueh-liang, caused China to appeal to the Council on November 25 to interpose immediately for the establishment of a neutral zone between the stations of the Japanese and Chinese forces, such zone to be occupied by neutral detachments. China would then, if requested by the Council, withdraw its forces within the Great Wall.²⁸ The Council endeavored in vain to obtain Japan's agreement to a proposal for the establishment of a neutral zone through the mediation of observers whom many Council members had sent to the Chinchow region. Japan objected not only to any neutral mediation, but insisted also on arranging the neutral zone with the "local" Chinese authorities, and on reserving the right to enter it in case of a serious and urgent threat to the safety of Japanese troops and nationals in Northern China. Unsuccessful, the Council finally turned to the adoption of the resolution which meanwhile had been redrafted.

Resolution of December 10

In a public session on December 9 M. Briand submitted the resolution, together with an interpretative declaration, to the Council. China had been induced to give up its insistence on a time limit for the evacuation of the Japanese troops. In return the declaration explained that, if the undertakings given by the two parties according to the resolution of September 30 had not been carried out by the time of the arrival of the League commission, the latter should as speedily as possible report to the Council on the situation. In addition, the resolution stressed the necessity of the execution of these pledges, so that the withdrawal of Japanese troops within the railway zone might be effected as speedily as possible. As a concession to Japan it merely noted that the parties undertook "to adopt all measures necessary to avoid any aggravation of the situation and to refrain from any initiative which may lead to further fighting and loss of life," instead of calling upon them to issue strict orders to their commanders to this effect. This clause was so designed to enable the Japanese to reserve the right to take "measures of police"—on which it had continually insisted. The resolution provided for the appointment of a Commission of Enquiry whose terms of reference were exceedingly wide. It was "to study on the spot and report to the Council on any circumstance which, affecting international relations, threatens to disturb the peace between China and Japan, or the good understanding be-

tween them, upon which peace depends." Any negotiations initiated by the two countries and the military arrangements of either party, however, were expressly excluded from its competence.²⁹

On December 10 the Council, having adopted this resolution, adjourned. Japan accepted the resolution, subject to the expected ominous reservation that it was not intended "to preclude the Japanese forces from taking such action as may be rendered necessary to provide directly for the protection of the lives and property of Japanese subjects against activities of bandits and lawless elements rampant in various parts of Manchuria."³⁰ Dr. Sze protested that the obligation to refrain from any initiative that might lead to further fighting and loss of life "should not be violated under the pretext of the existence of lawlessness, caused by a state of affairs [i.e., invasion and occupation by the Japanese forces] which it is the very purpose of the resolution to do away with."³¹ The three Latin-American members of the Council entered formal reservations against the legality of any form of armed intervention.³²

In a statement of December 10, Secretary Stimson endorsed the resolution as "a definite step of progress." It was questionable whether this description was fully merited. According to M. Briand, the resolution had two aims: to put an end to the immediate threat to peace, and to facilitate the final solution of existing causes of dispute between the two countries. The achievement of the first aim had been prejudiced, however, by permitting Japan to engage in "policing activities" at its own discretion. While the presence of a Commission of Enquiry on the spot might act as a curb on any extensive military operations, a long time was likely to elapse before the members of the commission were named and could arrive on the scene. Much could happen in this interval to aggravate the situation. To accomplish the second aim, the Council seemed to have definitely embarked on the settlement of the "merits" of the dispute by appointing a Commission of Enquiry. Yet Japan had given no indication of a willingness to accept neutral mediation in the ultimate settlement. Moreover, the commission was not likely to report for a long time, since the scope of its investigations had been defined very broadly, and each of the parties had the right to request the commission to consider any question the examination of which it particularly desired. Japan, in the meantime, might seize the opportunity so to consolidate its position that the Council would ultimately

28. Cf. League of Nations, *Official Journal*, December 1931, p. 2374-6.

29. *Ibid.*, p. 2376.

30. *Ibid.*, p. 2377.

31. *Ibid.*, p. 2381-3.

32. Cf. League of Nations, C.894.M.468.1931.VII., *Official Journal*, December 1931, p. 2558.

have to resign itself to tacit recognition of the situation as a *fait accompli*.

The policy of the United States

The apprehension that the resolution of December 10 failed to meet the immediate exigencies of the situation was soon confirmed. Despite a renewed protest by Secretary Stimson in a note of December 24,³² the Japanese drive in the direction of Chin-chow was launched on December 28 and ended in the occupation of that city on January 2. In a vigorous note of January 7, the American government noted that by this act "the last remaining administrative authority of the Government of the Chinese Republic in South Manchuria, as it existed prior to

September 18, 1931," had been destroyed. It served notice on both parties

"... that it cannot admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement entered into between those governments or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China or to the international policy relating to China, commonly known as the open-door policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris..."³³

By this note Secretary Stimson inaugurated a policy of passive resistance to Japanese action in Manchuria.

THE SHANGHAI PHASE OF THE DISPUTE

When the Council assembled for its regular session on January 25, however, the immediate danger zone had been transferred suddenly to Shanghai. Here hostilities were threatened in consequence of determined action by Japan to put an end to the increasingly severe anti-Japanese boycott and agitation. On January 18 a Chinese mob had attacked a group of five Japanese, including two Buddhist priests; three Japanese had been seriously injured, and one had subsequently died. The Japanese Consul-General had immediately presented an ultimatum to the mayor of the Chinese municipality, requesting a formal apology, immediate punishment of the guilty persons, payment of an indemnity, suppression of all anti-Japanese manifestations, and immediate dissolution of all anti-Japanese organizations. Faced by a threat of the Japanese Admiral, Shiozawa, to take action in case of failure to comply, the Mayor accepted the Japanese demands in their entirety on January 28. His reply was termed completely satisfactory by the Consul-General. Earlier in the day, however, the Municipal Council of the International Settlement, in order to guard against possible hostilities or a revolt among the Chinese population, had declared a "state of emergency." A plan previously drawn up by the International Settlement Defense Committee³⁴ for the protection of the Settlement in such a case of emergency had allotted sections of the Settlement to the troops of each of the interested powers to defend. American and British troops had occupied their sections immediately. The Japanese had been assigned the northeastern

sector and also one of the so-called Extra-Settlement Road areas,³⁵ including North Szechuen and Dixwell Roads and Hongkew Park. The latter area actually comprises part of the Chinese district of Chapei. It was already some hours after the Mayor's acceptance of the ultimatum that the Japanese commander, presumably apprehensive of the danger to Japanese nationals arising from the concentration of Chinese troops in Chapei, served notice that he was about to take steps to protect the zone assigned to his forces for defense. At the same time he demanded the speedy removal of the military works constructed by the Chinese in Chapei. The Chinese troops, fearing that the Japanese navy was determined to take punitive action, failed to heed the demand, and the Japanese marines advancing to take up their positions were fired upon.³⁶ Initial clashes developed into large-scale hostilities entailing great destruction and jeopardizing the neutrality and safety of the International Settlement.

Articles 10 and 15 invoked by China

On January 29 M. Yen, China's representative on the Council, formally invoked the application of Articles 10 and 15 of the Covenant. He asked the Council to "advise

35. There are two Extra-Settlement Road areas, one to the west of the Settlement and another to the north, having a combined foreign population of 9,506. These areas have a very dubious legal status. They consist of land acquired outside the Settlement by the Council for road and public garden purposes. As such they can be held to include only these roads and public gardens and the property immediately abutting on them. The Municipal Council and courts of the Settlement have extended their administrative and judicial jurisdiction to these areas, although since 1906 the Chinese authorities have consistently opposed this extension of the Council's tax and police powers.

36. For the Japanese version of the incidents leading to the hostilities, cf. explanatory note communicated by the Japanese government, A.(Extr.).15.1932.VII. A neutral report claimed, contrary to the Japanese assertion, that the Chinese had no time to comply with the Japanese demands even if they wished to do so. A party of Japanese marines with armored cars had also attempted to enter Chinese territory through the Honan Road Gates, but were stopped by the Shanghai Volunteer Corps. (Cf. "First Report of the Shanghai Committee," cited, Part I, p. 374-6.)

32. Cf. "Conditions in Manchuria," cited, p. 48.

33. *Ibid.*, p. 53-4.

34. This committee is composed of the garrison commanders—some treaty powers maintain more or less permanent garrisons at Shanghai—the chairman of the Municipal Council, the head of the Municipal Police, and the commander of the Volunteer Corps. (Cf. "First Report of the Shanghai Committee," C.185.M.90.1932.VII, *Official Journal*, March 1932, Part I, p. 374-6.)

upon the means" by which the obligation of League members under Article 10 "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" might be fulfilled, and demanded the application of Article 15 in addition to Article 11, since the dispute had now reached such a stage that it threatened to provoke a rupture between China and Japan. Over Japan's protest,³⁸ the Council proceeded to the application of the procedure of Article 15. Under this article it is first of all mandatory on the Secretary-General, upon notification by any party of the existence of a dispute, to "make all necessary arrangements for a full investigation and consideration thereof." For this purpose the parties to the dispute are to communicate to him complete statements of their cases. The Council's first duty is to endeavor to effect a settlement through mediation. Only if mediation fails must the Council adopt, either unanimously or by a majority vote and within six months after the submission of the dispute, a report embodying its recommendations with regard to the dispute. To be unanimous, a report does not require the concurring votes of the disputants. Should a League member "go to war" with a party complying with the recommendations of a unanimous report, the economic and military sanctions of Article 16 would become applicable.

The Secretary-General proposed that the neutral Council members having representatives in Shanghai assist him in making arrangements for the investigation of the dispute by instructing these representatives to constitute a committee to report to him on the incidents, their causes and development.³⁹ His proposal was promptly accepted.

At Shanghai "war in everything but name" was in progress, the British delegate, J. H. Thomas, told the Council on February 2. He informed that body that the United States and Great Britain had presented to both governments a formal request for the cessation of all acts of violence and preparations for hostilities, mutual withdrawal of their troops and initiation of negotiations for the settlement of all outstanding differences in the spirit of the Pact of Paris and the Council resolution of December 10.⁴⁰ The Council confined its action to endorsing this

step.⁴¹ The seriousness with which the great powers viewed the situation, however, was marked by the reinforcement of their respective military and naval establishments at Shanghai during the first part of February.

The situation at Shanghai grew steadily worse. The Japanese launched a vigorous attack on the Chinese forts at Woosung guarding the mouth of the Whangpoo River on which Shanghai is situated. The second report of the Shanghai Committee, dated February 12, characterized the situation as follows:⁴²

"Since February 3 state of open warfare exists, any pretense truce being abandoned. Firing continues intermittently, both in Chapei and Woosung area, with the use of artillery and, on the side of the Japanese, by aerial bombardment. Offensive is entirely in the hands of the Japanese, whose declared object is to capture Woosung forts and drive all Chinese troops considerable distance from Shanghai."

The armistice negotiations had made no progress, although the Chinese government had accepted the Anglo-American proposals on February 3.⁴³

On February 16 the twelve neutral members of the Council addressed an urgent appeal to the Japanese government,⁴⁴ calling on Japan "to recognize the very special responsibilities for forbearance and restraint which devolve upon it in the present conflict . . ." and expressing regret that Japan "has not found it possible to make full use of the methods of peaceful settlement provided in the Covenant." Most important of all, they announced adherence to the American policy of non-recognition, as laid down in Secretary Stimson's note of January 7, by declaring that no infringement of the territorial integrity and no change in the political independence of any member of the League brought about in disregard of Article 10 should be recognized as valid by League members.

China requests a special session of Assembly

Meanwhile the Chinese delegate, seeking more vigorous action, had availed himself of paragraph 9 of Article 15 and had formally requested the Council on February 12 to refer the dispute to the Assembly.⁴⁵ The request had not yet been acted upon when the situation at Shanghai took another turn for the worse. On February 18 M. Yen felt forced to request an immediate Council meeting. The armistice conference under the presidency of Sir Miles Lampson, the British Minister to China, had broken down;

38. M. Sato, the Japanese delegate, entered a formal reservation denying the applicability of Article 15. In addition, he maintained the consideration of the case by the Council under both Article 11 and 15 to be inconsistent. (Cf. League of Nations, "Minutes of the 66th Session of the Council," *Official Journal*, March 1932, Part I, p. 340-2.)

39. Cf. League of Nations, Council Meeting of January 30, *Official Journal*, March 1932 (Part I), p. 343-4.

40. Cf. League of Nations, *Official Journal*, March 1932 (Part I), p. 350. This statement omitted important details of the proposals, namely that the neutral zone be policed by neutrals, and that the subsequent negotiations be conducted with the aid of neutral observers or participants. (Cf. U. S. State Department, *Press Releases*, February 6, 1932, p. 111.)

41. League of Nations, *Official Journal*, March 1932 (Part I), p. 353.

42. League of Nations, C.227.M.131.1932.VII, *Official Journal*, March 1932 (Part I), p. 379-80.

43. League of Nations, C.181.M.88.1932.VII, *Official Journal*, March 1932 (Part I), p. 394-5 and 356.

44. League of Nations, C.237.M.130.1932.VII, *Official Journal*, March 1932 (Part I), p. 383-4.

45. League of Nations, C.219.M.114.1932.VII, *Official Journal*, March 1932 (Part I), p. 386.

the Japanese had presented an ultimatum requiring the Chinese to withdraw twenty kilometers from the International Settlement by 5 p.m. on February 20, and to dismantle all military works in the evacuated area. Under the shadow of this ultimatum, which was to expire at midnight February 19-20 (Geneva time), the Council met in the evening of February 19. M. Yen warned of the impending battle and appealed for the immediate adoption of conservancy measures. M. Sato, in order to gain time, launched into a lengthy defense of the Japanese policy. Abandoning all pretexts, he advanced the thesis that rigorous application of the Covenant is impossible in the case of a country which for more than ten years had been "in a state of civil war, in a condition of complete chaos and incredible anarchy." As for Shanghai, he said, the Japanese only desired to protect themselves there, and as soon as this mission was accomplished they would be ready to withdraw and leave neutral forces to patrol a neutral zone ultimately set up. At the conclusion of the debate, M. Paul-Boncour, supported by other Council members, voiced an eleventh-hour appeal for the extension of the ultimatum which would expire in a few hours, in order to permit the reopening of the negotiations.⁴⁷

This rather tardy supplication was of no avail. Neither did the joint representations on February 19 of the American, British, Italian, and French ministers to the Japanese minister at Shanghai succeed in preventing the launching of the Japanese attack on the morning of February 20. The Japanese, apparently, were determined to drive the Chinese forces twelve and a half miles from Shanghai and then establish a neutral zone about the city. Until March 1 a practically continuous battle raged along the line from Woosung to Chapei. The fighting was severe, the loss of life tremendous, and the destruction of property immense.⁴⁸ The Chinese troops offered unexpected and determined resistance. Not until the afternoon of March 1 did the Chinese military authorities issue orders for a general withdrawal from the whole Shanghai area, thus relieving the situation temporarily.⁴⁹

Meanwhile Secretary Stimson once more defined American policy in a letter to Senator Borah of February 23. He denied that the Nine-Power Pact had become inapplicable by reason of the chaotic conditions in

China. The delays in China's progress and the instability of its attempts to secure a responsible government were anticipated by the advocates of the "open door" doctrine and were the very obstacles which this doctrine, as crystallized in the Nine-Power Pact, was designed to meet. The recent events in China had brought home "the vital importance of the faithful observance of the Covenants therein to all the nations of the Far East." Secretary Stimson gave notice to Japan that the validity of the Five-Power Washington Disarmament Agreements depended on the integral maintenance of the Nine-Power Pact.⁵⁰ To lend emphasis to the American stand, the United States Navy Department on February 29 ordered nearly every available warship to the Pacific, making a total of 202 vessels in that area. In addition, a movement to institute a boycott against Japan was gaining considerable support in the United States.⁵¹

Assembly resolution of March 11

The growing fear in Japan that the Assembly, which the Council on February 19 had summoned into special session for March 3, might take energetic action apparently aided in bringing about the renewal of armistice negotiations in Shanghai on February 28.⁵² To facilitate the cessation of hostilities, President Paul-Boncour proposed on February 29 that, as soon as local arrangements for the cessation of fighting should have been made, a round-table conference, including the powers having special interests in Shanghai, as well as China and Japan, should be convened at Shanghai in order to effect the final conclusion of the armistice and the restoration of peaceful conditions.⁵³

When the Assembly met in extraordinary session on March 3, the situation in Shanghai was still precarious. Though both parties had issued orders to their respective commanders on that day to cease firing unless attacked, the armistice negotiations had apparently broken down. The Japanese insisted that they could withdraw to close proximity of Shanghai and Woosung only after the Chinese withdrawal had been officially noted, and that final withdrawal from Chinese territory could take place only "as and to the extent that tranquillity is re-

50. U. S. State Department, *Press Releases*, February 24, 1932.

51. The Lowell-Baker petition urging the imposition of a boycott was endorsed by more than 270 prominent citizens. (*New York Times*, February 23, 1932.)

52. Cf. *New York Herald Tribune*, March 1, 1932.

53. Cf. League of Nations, "Minutes of the 66th Session of the Council," *Official Journal*, March 1932 (Part III), p. 917-920. It was understood, however, that Japan should disavow in advance any intention to establish a Japanese settlement in Shanghai or otherwise advance its exclusive interests there, and China should recognize that the safety and integrity of the French and International Settlements must be preserved. M. Sato accepted the plan subject to his government's approval, which came the next day, and M. Yen agreed to urge acceptance on his government.

47. League of Nations, *Official Journal*, March 1932 (Part I), p. 368-77.

48. The China Monthly Trade Report of the U. S. Department of Commerce of April 1, 1932 quotes estimates of Shanghai "war" losses ranging from \$500,000,000 to \$1,500,000,000. Property damage alone was estimated by Shanghai municipal authorities to amount to \$350,000,000. (Cf. *New York Herald Tribune*, March 17, 1932. A dispatch to the *New York Times*, March 3, quoted a conservative estimate of 23,000 casualties.)

49. League of Nations, Fourth Report of the Shanghai Committee, A. (Extr.). 15.1932.VII.

stored." These terms the Chinese rejected as "tantamount to conditions of surrender."⁵⁴ The first task of the Assembly, therefore, was to insure the definitive cessation of hostilities. On March 4 it adopted a resolution calling on the parties to make effective their orders for cessation of hostilities, and requesting other powers having special interests in Shanghai to inform the Assembly of the execution of these orders. It also recommended that negotiations be initiated with the assistance of the representatives of the above-mentioned powers at Shanghai for the conclusion of arrangements to render definite the armistice and regulate the withdrawal of the Japanese troops.⁵⁵ Political conditions, it was made clear, could not be made part of the "arrangements."⁵⁶

Japan participated in the Assembly, although repeating its reservation denying the applicability of Article 15. M. Sato expressed the opinion that the Assembly should not discuss Manchuria, since an inquiry was now in progress and there was no danger of a rupture in sight. China, for its part, was anxious that the Assembly inquire into every phase of the dispute. In addition to effecting the "cease-fire" and the withdrawal of the invading forces, the Assembly should, according to M. Yen, effect the peaceful settlement of the entire Sino-Japanese controversy within the scope of the Council's resolutions and the spirit of the Covenant; recognize that the Covenant, particularly Articles 10 and 12, had been violated; and declare that China had no shadow of responsibility for the existing state of affairs.⁵⁷

The Assembly soon revealed its firm determination to assume jurisdiction over the whole dispute. After constituting itself as a Committee of the Whole, it devoted three full days to a general discussion of the principles and issues involved in the case. The small powers particularly spared no words of condemnation in characterizing Japan's action; six of them alluded directly or indirectly to the possibility of the application of sanctions. The Latin-American states staunchly upheld the principle of non-intervention. Several delegates declared Article 12 had been violated, and the practically unanimous opinion was expressed that no state should be permitted to take justice into its own hands.⁵⁸ The resolution finally adopted without dissent on March 11 crys-

tallized the principles expressed in the general debate. It reaffirmed and declared applicable to the present dispute:

1. The principle of scrupulous respect for treaties;
2. The undertaking entered into by all League members to respect and preserve as against external aggression the territorial integrity and existing political independence of each other;
3. Their obligations to submit any dispute which may arise to procedures for peaceful settlement.

It therefore declared it incumbent upon members of the League "not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations." In affirming that a settlement of the dispute should not be sought under stress of military pressure, it recalled the resolutions of September 30, December 10, and March 4. Finally, it constituted a committee of nineteen members under the chairmanship of the President of the Assembly, M. Hymans, and including all the Council members with the addition of six members elected by ballot. This committee was given the following functions:

1. To report as soon as possible on the cessation of hostilities and the definitive armistice at Shanghai;
2. To follow the execution of the resolutions of September 30 and December 10;
3. To prepare drafts of an agreement to be submitted to the Assembly to facilitate the exercise of its conciliatory functions for the settlement of the dispute under paragraph 3, Article 15; and to propose, if necessary, resort to the Permanent Court of International Justice for an advisory opinion;
4. To prepare, if necessary, a draft report according to paragraph 4, Article 15—i.e., a definitive proposal for the settlement of the dispute which could be approved by a majority vote, including the votes of members of the Council but excluding those of the disputants;
5. To propose any urgent measure that might be necessary.

In addition the Assembly remained in session, ready to be convened at any time.⁵⁹

The Committee of Nineteen saw its first duty in securing the conclusion of a definitive armistice at Shanghai. Despite the disposition of M. Sato to challenge its authority to interfere in the armistice negotiations on the spot, it firmly assumed supervision over these negotiations. It insisted that the final terms of the armistice should be in accord with the principles of the resolutions of March 4 and 11. Accordingly, it caused M. Sato to agree that Japan could not make its withdrawal conditional on the reaffirmation

54. Cf. League of Nations, C.295.M.182.1932.VII, and A.(Extr.).8.1932.VII.

55. League of Nations, Special session of the Assembly, Minutes of the Third Plenary Meeting.

56. League of Nations, Special Session of the Assembly, General Commission, Minutes of the First Meeting.

57. League of Nations, Special Session of the Assembly, Minutes of the Second Plenary Meeting.

58. League of Nations, Special Session of the Assembly, General Commission, Minutes of the 2nd, 3rd, 4th, and 5th Meetings.

59. Special Session of the Assembly, Minutes of the Fourth Plenary Meeting. The Japanese delegate abstained from voting, although expressing agreement with the fundamental principles of the resolution. M. Yen was disappointed. China had hoped that efforts of conciliation would now at last be abandoned and paragraph 4 of Article 15 applied to enable the Assembly to adopt a report citing Japan as a violator of the Covenant.

by China of the letter of the Mayor of Shanghai accepting the Japanese ultimatum of January 18, since that was a "political" condition.⁶⁰ The peace parley at Shanghai, conducted under the presidency of Sir Miles Lampson, soon reached a deadlock, largely on the question of whether there should be a time limit for the withdrawal of the Japanese forces and the distance to which they should be withdrawn. The Committee of Nineteen then proposed to empower the Mixed Commission at Shanghai—consisting of representatives of China, Japan, Great Britain, Italy, France, and the United States—to decide at the request of one of the parties and, if necessary by a majority vote, when the complete withdrawal could be effected. In addition, it declared that the resolution of March 4 would be carried out only by the complete evacuation of the Japanese forces.⁶¹ Although this proposal proved unacceptable to Japan, it undoubtedly served to accelerate the conclusion of the negotiations. By April 30 both parties had provisionally agreed to an armistice. Thereupon the League Assembly, convened on April 30, unanimously adopted a resolution declaring that the draft armistice agreement conformed to the spirit of the resolutions of March 4 and 11, that it was in accordance with these resolutions that the withdrawal should take place in the near future and should include all the Japanese forces.⁶²

The Shanghai Armistice

On May 5 the armistice providing for a definitive cessation of the hostilities and the withdrawal within four weeks of the Japanese troops to the positions they held before the incident of January 28, 1932 was signed by both parties. The Chinese troops were to remain in their existing positions pending later arrangements. A mixed commission, including neutrals, was to supervise the evacuation and arrange for the transfer of the evacuated territory to the Chinese police.⁶³ Thus the Shanghai incidents appeared to have been liquidated with the aid of the League. Nevertheless Japan would seem to have attained its objectives at least in part. By providing that Chinese soldiers could not enter the area evacuated by the Japanese troops "pending later arrangements upon the reestablishment of normal conditions," the armistice agreement had in effect demilitarized a zone about Shanghai for an indefinite period of time. It was rumored, moreover, that the armistice agree-

ment really contained an unwritten undertaking by China to put an end to all anti-Japanese boycott activities.⁶⁴

The Committee of Nineteen and Manchuria

The Committee of Nineteen had not been altogether neglecting the Manchurian phase of the dispute. The Japanese had consolidated their position in Manchuria by the occupation of Harbin and the creation of an "independent" Manchoukuo government⁶⁵ under Japanese tutelage on February 18. Hsuan Tung, the former Chinese boy-emperor, had been formally installed as dictator of this government on March 9. Japanese troops were actively engaged in campaigns against irregular Chinese forces. The Assembly Committee, although requesting reports from the parties as to the measures they had taken or would take to execute the resolutions of September 30 and December 10, deemed it unwise to take action on Manchuria at least until the receipt of the preliminary report from the Commission of Enquiry. The slate of the commission membership, completed on January 5, gave no representation to the small powers. The personnel of the commission was of high calibre, however, representing experience in diplomatic, colonial, and military affairs. It included Lord Lytton (Great Britain), General Henri Claudel (France), Count Luigi Aldrovandi-Marescotti (Italy), Dr. Heinrich Schnee (Germany), and Major-General Frank R. McCoy (United States). The commission did not arrive in the Far East until February 29, 1932, and in Mukden not before April 21. The Assembly Committee requested it to hasten the preliminary report on the situation in Manchuria which it was bound to make in case the undertaking with reference to withdrawal given by the parties in the Resolution of September 30 had not been carried out. The report forwarded to the League on April 30 contained but little verified information and no recommendations, so that the Committee felt forced to suspend its activity until the receipt of the commission's final report. In view of the fact that this report was not expected before mid-September, the Committee of Nineteen secured the consent of Japan and China to an extension of the six months' period, expiring August 19, within which the Assembly was bound under Article 12 to report on the Sino-Japanese conflict.

60. League of Nations, Special Session of the Assembly, Special Committee, Minutes of the First Meeting.

61. League of Nations, Report presented by the Committee of Nineteen in execution of paragraph 1 (part III) of the resolution of March 11, 1932, A.(Extr.).108.1932.VII.

62. League of Nations, Special Session of the Assembly, Minutes of the fifth Plenary Meeting.

63. For the text, cf. *New York Times*, May 10, 1932; also "The Shanghai Armistice," *Foreign Policy Bulletin*, Vol. XI, No. 28, May 13, 1932. The withdrawal of the Japanese land forces from Shanghai and vicinity was actually completed on May 31, 1932. (Cf. League of Nations, C.508.M.247.1932.VII.)

64. Cf. "The Shanghai Armistice," cited.

65. Cf. T. A. Bisson, "Japan and Manchoukuo," *Foreign Policy Reports*, Vol. VIII, No. 8, June 22, 1932.